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February 10, 2003

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## HAND DELIVERY

Senate Select Committee on  
Constitutional Amendment Implementation  
c/o Mr. Phil Twogood  
Staff Director  
Room 409, Senate Office Bldg.  
Tallahassee, FL 32301

Re: Amendment 6 - Smoke-Free for Health  
Statement of Sponsors' Intent

Dear Mr. Twogood:

I am attaching for your convenience a copy of the statement of intent of the sponsors of Amendment 6 that was furnished to the Senate on February 3, 2003 and to the House on February 4.

I want to call to your attention, however, an important point of clarification on an issue that came to light during the Senate hearing, particularly as a result of questions posed by Senator Smith. Senator Smith asked whether Amendment 6 requires a "gross revenue" test of foods that may be provided by a stand-alone bar as defined in the amendment, and one or two speakers urged the use of such a percentage-based test. As I tried to make clear in my oral responses, a gross revenue test is neither required, nor is it authorized, by Amendment 6. Rather, when Amendment 6 uses the phrase "merely incidental," both with respect to products sold by stand-alone bars and by retail tobacco shops, the phrase was intended to refer to products collateral and secondary to the main product or purpose of the business, and the sponsors intended for the legislation and administrative rules to furnish a list of the kinds of products that could be permitted. This is the approach that the Tri-Agency Coalition on Smoking and the Florida Restaurant Association have jointly furnished in draft bill language circulated yesterday, a copy of which is also attached for your convenience. A "gross revenue" approach is, therefore, not only contrary to the letter and intent of the amendment itself, but is problematic for pragmatic reasons that we have attempted

to explain, such as being difficult, burdensome, and expensive for both the State and businesses to report, audit, and monitor on an ongoing basis in order to fulfill the public health purposes of Amendment 6.

The reference to "gross revenue" that Senator Smith and certain speakers focused upon appears in the last sentence of the definition of stand-alone bars in Amendment 6. It does not refer to revenues of the stand-alone bar itself, but rather refers to revenues from any business activity with which the stand-alone bar shares any common area. In other words, the sole reference to "gross revenue" in Amendment 6 is part of the third criterion that a place of business must satisfy in order to qualify as a stand-alone bar; i.e., that it not at any time operate as some other type of business or share any common entryway or common indoor area with any business that sells more than an incidental amount of "food or any other product or service." This is intended to prevent a business from operating a restaurant and a bar within the same place of business (literally, it must be "stand-alone"). The definition of stand-alone bar from Amendment 6 is set forth below with the criteria broken down so that you can more clearly see how the phrase "gross revenue" is used:

"Stand-alone bar" means any place of business

[1] devoted during any time of operation predominantly or totally to serving alcoholic beverages, intoxicating beverages, or intoxicating liquors, or any combination thereof, for consumption on the licensed premises,

[2] in which the serving of food, if any, is merely incidental to the consumption of any such beverage; and

[3] that is not located within, and does not share any common entryway or common indoor area with, any other enclosed indoor workplace including any business for which the sale of food or any other product or service is more than an incidental source of gross revenue.

Breaking this definition down into its component parts this way, it is easier to see that the phrase "gross revenue" is referring to the separate business activity referenced within the third criterion, not referring to the sales or activities of the bar itself. Thus, the approach taken by the sponsors and the Florida Restaurant Association, to list the foods that may be served by a stand-alone bar, is the correct approach and the only one intended and authorized by the amendment itself.

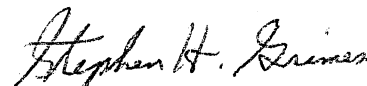
I remain available to answer any questions your or any members of the Committee or staff may have with respect to implementing Amendment 6. We

Senate Select Subcommittee  
February 10, 2003  
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would appreciate your making this letter and its attachments available for their review.

Sincerely yours,

HOLLAND & KNIGHT LLP

A handwritten signature in cursive script that reads "Stephen H. Grimes".

Stephen H. Grimes

Enclosure

TAL1 #261491 v4

**STATEMENT OF SPONSORS' INTENT**  
**AMENDMENT 6 – SMOKE-FREE FOR HEALTH**

SMOKE-FREE FOR HEALTH, INC.

2/3/03

TRI-AGENCY COALITION ON SMOKING

American Cancer Society, Florida Division

American Lung Association of Florida, Inc.

American Heart Association, Florida/Puerto Rico Affiliate

1. Coverage and Construction.

The intent of the sponsors of Amendment 6 was to protect as many people in Florida as possible against exposure to second-hand tobacco smoke in as many instances as possible. The amendment states its intent to protect "people" – not just employees or workers, not just citizens or legal residents of Florida, but rather all people present in Florida who might otherwise be exposed to second-hand tobacco smoke. The sponsors intended for the law to ban smoking in all but a very few narrowly defined places in Florida, in order to significantly reduce exposure to second-hand tobacco smoke. The amendment defines "work" in such a broad way that smoking will be prohibited in virtually all enclosed indoor places in Florida. It is the intent of the sponsors that the amendment be implemented and enforced in a meaningful way in order to protect the largest possible number of people from exposure to second-hand tobacco smoke in as many instances as possible.

2. Exceptions.

The amendment allows very limited and expressly specified exceptions, but it does not require them. The amendment does not create a constitutional or legal right to smoke anywhere in Florida. On the contrary, the amendment creates a legal right not to be exposed to second-hand tobacco smoke. If the Legislature decides to allow any exceptions, the sponsors intend for the allowed exceptions to be very narrowly construed and enforced in a manner consistent with the express terms of the exceptions and in furtherance of the intent of the amendment.

The Legislature may further restrict smoking and may pass laws allowing local government to further restrict smoking (i.e., repealing state pre-emption only to the extent of allowing more restrictive local regulations), but no more liberal or lenient regulation of smoking may be allowed. Any provisions of Florida law, including the Florida Clean Indoor Air Act, that are inconsistent with the

Amendment cannot stand. On the other hand, provisions of law that are consistent with the amendment will continue to apply unless repealed.

### 3. Specific Terminology/Definitions.

"Work" is defined broadly with the intent of including activities performed even by non-employees and outside a typical employment setting. Thus, for example, partners, owners, proprietors, and family-owned businesses are also covered by the amendment, as are migrant workers and aliens, whether legally present in Florida or not. Further, the amendment defines "work" to include activities that are social, gratuitous, or volunteer in nature, and thus gatherings, meetings, dinners, dances, and so forth that involve social clubs, Bingo play, VFW activities, Alcoholics Anonymous, Weight Watchers, and the like also fall within the scope of the amendment even if no hired staff assist. Such gatherings or meetings involve activity within the definition of "work," such as setting up before and cleaning up after the meeting, preparing and serving meals, and so forth. The amendment specifies that smoking is prohibited without regard to whether "work" is occurring at any given time, and thus smoking cannot be allowed in a workplace during break times or before or after work. In sum, the effect of the broad definition of "work" is, and was intended to be, that smoking will be prohibited in virtually all enclosed indoor places in Florida.

"Enclosed indoor workplace." The amendment uses the term "place" broadly to mean that smoking is to be prohibited in all enclosed indoor parts of any place that meets the terms of this definition; and to extend more broadly than "building," or "structure" so as to encompass all manner of enclosures, whether fixed and permanent such as office buildings; or temporary, such as tents. If the "place" in question is inside a larger structure that itself is an enclosed indoor workplace, such as a mall, an airport, or an office building, then smoking cannot be allowed in that place because to allow it would expose other people and workers within the larger structure to second-hand tobacco smoke. Smoking is to be prohibited at all times in all such places and parts of places.

"Enclosed" and its use of the phrase "predominantly or totally bounded" means more than 50% enclosed by a roof or walls. Thus, if a business has enclosed areas and outdoor areas, smoking may be allowed in the outdoor area only if it meets this definition of "enclosed." In the case of patios, porches, decks, and the like that can be enclosed at some times and opened at other times, smoking cannot be allowed in any such place when its barriers are closed so as to make it "enclosed" and expose the people inside it to second-hand smoke. In keeping with

the spirit and intent of the amendment, further consideration should be given to protecting against infiltration of smoky air from such outdoor areas into enclosed indoor areas; i.e., creating a "smoke-free zone" around entrances and ventilation equipment of non-smoking buildings.

The definitions of both "work" and "enclosed indoor workplace" in Amendment 6 use the present tense, and thus the temporal test of compliance with the law will be whether at the time of an alleged violation or enforcement action the place in question qualified as a place where smoking must be prohibited.

"Commercial" use of a private home to provide child care, adult care, or health care converts it into a place in which smoking cannot be permitted so long as the commercial use is occurring. For example, if an in-home children's day care operates in a private residence from 7 a.m. to 7 p.m. Monday through Friday, smoking may not be permitted in the home during those days and hours. In contrast, if a homeowner hires someone to come in to the home to babysit the homeowner's own children or provide health care to an adult member of the homeowner's family, that is not a commercial use within the meaning of the amendment. If, however, the homeowner hires or sub-contracts with a provider of child, adult, or health care to come into the home and care for children, adults, or ill or disabled persons who are not the homeowner's own children or family, or otherwise allows the home to be used for that purpose, and third parties are paying for such care taking place in the home, smoking may not be permitted there. In other words, for example, a homeowner cannot get around this prohibition by having an arrangement where they hire someone else to come into their home and run or manage a day care for neighborhood children there. If that kind of work is occurring in the home, it must be nonsmoking during the business hours.

Smoking may be permitted in a private home that is used for other kinds of businesses or social gatherings and, of course, in private homes that are not used for any kind of business. The fact that a private residence is included within a larger structure does not convert the entire structure into a place where smoking may be permitted.

"Retail tobacco shop." A retail tobacco shop located within a mall or airport cannot allow smoking because it is a place within a larger enclosed indoor workplace. Other retail tobacco shops may allow smoking if any items they sell in addition to tobacco and tobacco products are only "merely incidental" to the primary tobacco products. The intent of this restriction is to prohibit smoking in retail tobacco stores that sell other, non-tobacco-related items (such as collectibles,

artwork, food, and so forth). "Incidental" is used primarily in its sense of being related in nature to the primary product (tobacco) but only casually or secondarily present, and "merely" emphasizes that such additional items offered for sale are subordinate in relation to the primary product. Thus, persons shopping for an item unrelated to tobacco will not be in danger of exposure to second-hand tobacco smoke, and the only persons who will be so exposed are those who are seeking out tobacco or a tobacco-related product, who are presumed to expect such exposure in any event. The sponsors intend for this limitation on the sales by retail tobacco shops to be accomplished by providing a list of the types of items that such shops may sell. The sponsors intended that approach because, among other reasons, they believe that it is more effective and simple to implement than designating a percentage of revenue that may not be exceeded for incidental items. The sponsor did not intend to burden either businesses or the state with requirements of a financial statement or sales report type of analysis to determine the relative percentages of sales for tobacco and for other items, because the intent can be accomplished more efficiently, with less regulatory burden, and without the problems of potentially daily fluctuation, if the legislation merely lists the kinds of items that are allowed, all other kinds being excluded.

"Designated smoking guest rooms at public lodging establishments." This definition is already very specific and limits smoking in public lodging establishments of every kind throughout Florida to sleeping rooms and directly associated private areas such as bathrooms, living rooms, and kitchen areas (as in a suite), if any, rented to guests for their exclusive transient occupancy. If the Legislature allows this exception, this means that a hotel may continue to designate some bedrooms as smoking rooms, but may not allow smoking in lobbies, hallways, foyers, restaurants, meeting rooms, banquet rooms, ballrooms, hospitality suites, bars, or tobacco shops located within the hotel. If allowed by the Legislature, and subject to any restrictions the law may impose on flow of smoke from outdoor areas to indoor areas, the hotel could permit smoking in outdoor areas that do not fall within the definition of an enclosed indoor workplace, such as pools, patios, and the like.

"Stand-alone bar." The phrase "stand-alone" was intended to mean bars that are physically independent of any and all other enclosed indoor workplaces, and this intent is emphasized by the requirement that such a bar may not share any common entryway or common indoor area with a restaurant or other workplace. A stand-alone bar cannot exist within a mall, an airport, a restaurant, an office building, a hotel, etc.

The phrase "during any time of operation" applies to all of the restrictions listed within the definition itself, and was intended to mean that a bar cannot "switch-hit" – i.e., it cannot be a restaurant or other business by day (in which smoking will not be permitted) and then turn into a bar that allows smoking at night. Thus, if "at any time" the bar serves food, or if "at any time" the bar shares a common entryway or common indoor area with any other enclosed indoor workplace, it cannot allow smoking at any time. The presence of this language in this definition was not intended to change the interpretation of any other definition in the amendment; specifically, the sponsors' intent remains that a retail tobacco shop or other place where smoking may be allowed in some circumstances also cannot be part of or within another enclosed indoor workplace.

"Merely incidental," the same phrase that was used for accessory products sold by a retail tobacco shop, was intended to mean the service of prepackaged snack food items commonly consumed as a light accompaniment to alcoholic beverages and not requiring any food service license, and only to a subordinate degree. It was the specific intent of the sponsors that bars that allow smoking may not provide, make available, or allow on their premises (even if brought in by a caterer or a patron), full meals or food items such as a restaurant would serve. A stand-alone bar cannot serve, nor allow to be brought onto its premises in any way, food of a type or a quantity that would require it to obtain a food service establishment license if it were selling or otherwise providing such food to its patrons. As is the case with the use of this phrase for retail tobacco shops, it is the sponsors' intent that the legislation should list the types of snack items permitted, and should specify that no other food should ever be provided or consumed on the premises through any method (with the exception of employees' bringing their meals to work for their own exclusive consumption and never to be shared with patrons).

The amendment also states that sales of any food or any other product or service cannot be more than an incidental source of gross revenue. This statement is not intended to change or detract from the sponsors' intent as expressed in the "merely incidental" analysis set forth above. That is, the sponsors expect that if service of food or provision of other products or services are limited to a list of permitted snack foods as indicated above, then such other sales will naturally be a very small part of gross revenues for the bar. It is not the intent of the sponsor to require financial statement or sales report analysis of dollar amounts of sales in order to satisfy this criteria; such an analysis would be unnecessary, unduly burdensome, and subject to fluctuations from day to day.



#### 4. Implementing Legislation.

The amendment requires legislation to be adopted in the 2003 regular legislative session, effective no later than July 1, 2003. The legislation must authorize and require the implementing agency to adopt rules for implementing the law, and must provide civil penalties for violations of the law.

All provisions of the current Florida Clean Indoor Air Act will be repealed to the extent inconsistent with Amendment 6 and its implementing legislation.

The amendment expressly allows the Legislature to enact laws constituting or allowing more restrictive regulation of smoking. However, the Legislature may not enact or allow laws that are more lenient on smoking than the amendment itself is.

The amendment does not repeal state preemption of smoking regulation, which exists as a matter of general law. If the Legislature wishes to repeal preemption, it can do so, after which local governments could adopt more strict smoking regulations, but not regulations more lenient than Amendment 6 provides.

#### 5. Implementing Agency.

The amendment does not specify which state agency will implement the law. The amendment does, however, specify that it is to be implemented "in a manner consistent with its broad purpose and stated terms." Thus, the sponsor's position is that implementation must be delegated to the agency or agencies most likely to enforce the amendment zealously and meaningfully, and having the personnel and equipment resources to do so. The sponsors suggest that the law follow the regulatory structure already in place for the Clean Indoor Air Act, with the Department of Health having jurisdiction over most workplaces, the Department of Business and Professional Regulation over restaurants, and the Department of Agriculture over truck stops. The sponsors understand that the Department of Health is best suited to the task of being a central repository (database) for complaints and citations for violations of the law, to be referred to the appropriate agency for investigation and enforcement action. A central database of all complaints and citations is necessary so that the State may keep track of repeat offenses and for other regulatory purposes.

## 6. Civil Penalties.

Penalties provided must be sufficiently serious in amount, and must be enforced in such a manner, as to induce meaningful compliance with the amendment. It is not, however, the intent of the sponsors to make owners or managers of businesses liable for the acts of individuals beyond their control, so long as such owners or managers can demonstrate that they have exerted good faith efforts to require compliance with the law. It is also not the intent of the sponsors to require a new level of governance to implement the amendment, but rather to implement it efficiently and economically by using existing personnel and procedures within state government, and to empower private citizens to report observed violations of the act.

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CHAPTER 386

PART II

INDOOR AIR: TOBACCO SMOKE

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 386.202, Florida Statutes, is amended to read:

**386.202 Legislative intent and construction.**--The purpose of this part is to implement Article X, Section 20 of the Florida Constitution, to protect people from the health hazards of second-hand tobacco smoke. This part shall not be construed to provide a statutory right to tobacco smoking in any public or private place, and shall not be construed as prohibiting the Legislature from enacting or allowing more restrictive regulation of tobacco smoking. Any exceptions to the prohibition against tobacco smoking shall be strictly construed to restrict tobacco smoking except where clearly and conclusively permitted by both the letter and the spirit of the exception. Any doubts about the construction or application of this part shall be resolved against smoking and in the manner that most closely implements the smoke-free purposes of Article X, section 20, Florida Constitution. ~~protect the public health, comfort, and environment by creating areas in public places and at public meetings that are reasonably free from tobacco smoke by providing a uniform statewide maximum code. This part shall not be interpreted to require the designation of smoking areas. However, it is the intent of the Legislature to discourage the designation of any area within a government building as a smoking area~~

Section 2. Section 386.203, Florida Statutes, is amended to read:

1  
2 **386.203 Definitions.**--As used in this part:

3 (1) "Commercial" use of a private residence means any time during which the owner, lessee, or  
4 other person occupying or controlling the use of the private residence is furnishing in the private  
5 residence, or causing or allowing to be furnished in the private residence, child care, adult care, or  
6 health care, or any combination thereof, and receiving or expecting to receive compensation  
7 therefore. Subject to the exceptions listed above, it is not a commercial use of a private residence  
8 for the owner, lessee, or other person occupying or controlling the use of the private residence to  
9 cause or allow one or more persons to perform work in the private residence for the benefit of the  
10 owner, lessee, or person in control.

11 (2) "Common area" means any hallway, corridor, lobby, aisle, water fountain area, restroom,  
12 stairwell, entryway, or conference room ~~in any public place.~~

13 (3) "Department" means the Department of Health or the Department of Agriculture and  
14 Consumer Services, as the context requires.

15 (4) "Designated smoking guest rooms at public lodging establishments" means the sleeping  
16 rooms and directly associated private areas, such as bathrooms, living rooms, and kitchen areas, if  
17 any, rented to guests for their exclusive transient occupancy in public lodging establishments  
18 including hotels, motels, resort condominiums, transient apartments, transient lodging  
19 establishments, rooming houses, boarding houses, resort dwellings, bed and breakfast inns, and  
20 the like; and designated by the person or persons having management or supervisory authority  
21 over such public lodging establishment as rooms in which smoking may be permitted.

22 (5) "Division" means the Division of Hotels and Restaurants of the Department of Business  
23 and Professional Regulation.

1       (6) "Enclosed indoor workplace" means any place where one or more persons engages in  
2 work, and which place is predominantly or totally bounded on all sides and above by physical  
3 barriers, regardless of whether such barriers consist of or include, without limitation, uncovered  
4 openings, screened or otherwise partially covered openings; or open or closed windows, jalousies,  
5 doors, or the like. A place is "predominantly" bounded by physical barriers during any time when  
6 both of the following conditions exist: (a) it is more than 50% covered from above by a physical  
7 barrier that excludes rain, and (b) more than 50% of the combined surface area of its sides is  
8 covered by closed physical barriers. In calculating the percentage of side surface area covered by  
9 closed physical barriers, all solid surfaces that block air flow must be considered as closed  
10 physical barriers. This section applies to all such enclosed indoor workplaces and enclosed parts  
11 thereof without regard to whether work is occurring at any given time.

12       (7) "Food" means anything edible that is present or brought onto the premises for consumption  
13 by patrons, but does not include ice, beverages, or fruits or vegetables used solely to garnish a  
14 beverage.

15       (8) "Government building" means any building or any portion of any building owned by or  
16 leased to the state or any political subdivision thereof and used for governmental purposes.

17       (9) "Public meeting" means all meetings open to the public, including meetings of homeowner,  
18 condominium, or renter or tenant associations unless such meetings are held in a private residence.

19       (10) ~~"Public place" means the following enclosed, indoor areas used by the general~~  
20 ~~public: (a) government buildings; (b) public means of mass transportation and their associated~~  
21 ~~terminals not subject to federal smoking regulation; (c) elevators; (d) hospitals; (e) nursing homes;~~  
22 ~~(f) educational facilities; (g) public school buses; (h) libraries; (i) courtrooms; (j) jury waiting and~~  
23 ~~deliberation rooms; (k) museums; (l) theaters; (m) auditoriums; (n) arenas; (o) recreational~~  
24 ~~facilities; (p) restaurants; (q) retail stores, except a retail store the primary business of which is the~~

1 ~~sale of tobacco or tobacco-related products; (r) grocery stores; (s) places of employment; (t) health~~  
2 ~~care facilities; (u) day care centers; and (v) common areas of retirement homes and condominiums.~~

3 (11) "Retail tobacco shop" means any enclosed indoor workplace meeting all of the  
4 following criteria: dedicated to or predominantly for the retail sale of tobacco products, as defined  
5 by law, and accessories for such products; and in which the sale of other products or services is  
6 merely incidental; and in which no food is sold or in any other way present or brought onto the  
7 premises for consumption by patrons. For purposes of this definition, products or services sold by  
8 a retail tobacco shop are merely incidental if they are limited to instruments or paraphernalia  
9 designed and intended for the smoking or ingestion of tobacco or products prepared from tobacco,  
10 including rolling papers and holders therefor; rolling machines; tobacco grinders; tobacco scales;  
11 filter tips; cigar cutters; tobacco containers including tubes, tins, boxes, pouches, cases, and  
12 humidors; lighters; flints; wicks; matches; ashtrays; pipes; pipe screens; pipe cleaners; pipe filters;  
13 pipe display racks; and smoking control or cessation products or services.

14 (12) "Second-hand smoke," also known as environmental tobacco smoke (ETS), means  
15 smoke emitted from lighted, smoldering, or burning tobacco when the smoker is not inhaling;  
16 smoke emitted at the mouthpiece during puff drawing; and smoke exhaled by the smoker.

17 (13) "Smoking" means inhaling, exhaling, burning, carrying, or possessing any  
18 possession of a lighted tobacco product, including cigarettes, lighted cigars, lighted pipe tobacco,  
19 and or any other lighted tobacco product.

20 ~~(5) "Smoking area" means any designated area meeting the requirements of ss. 386.205 and~~  
21 ~~386.206.~~

22 (14) (a) "Stand-alone bar" means any place of business that during any time of operation  
23 is devoted predominantly or totally to serving alcoholic beverages, intoxicating beverages, or  
24 intoxicating liquors, or any combination thereof, for consumption on the licensed premises; and in

1 which the serving or providing of food, if any, is merely incidental to the consumption of any such  
2 beverage; and that is not during any time of operation located within, and does not at any time of  
3 operation share any common entryway or common area with, any other enclosed indoor workplace  
4 including any business for which the sale of food or any other product or service is more than an  
5 incidental source of gross revenue. Without limiting the foregoing, any business that has or should  
6 have a public food service establishment license pursuant to Chapter 509 is specifically excluded  
7 from this definition.

8 (b) A place of business constitutes a "stand-alone bar" only if:

9 (i) the only food provided by the business, or in any other way present or brought onto the  
10 premises for consumption by patrons, is limited to non-perishable snack food items commercially  
11 prepackaged off the premises of the stand-alone bar and served without additions or preparation,  
12 such as nuts, pretzels, chips, crackers, and the like; except that a stand-alone bar may pop popcorn  
13 for consumption on its premises, provided that the equipment used to pop the popcorn is not used  
14 to prepare any other food for patrons; and

15 (ii) the stand-alone bar does not at any time use any common area, food storage area, food  
16 preparation area, or air conditioning, heating, ventilation, or air filtration system that is at any time  
17 used as or by a restaurant or any other enclosed indoor workplace.

18 (15) "Work" means any person's providing any employment service or employment-type  
19 service for or at the request of another individual or individuals or any public or private entity,  
20 whether for compensation or not, whether full or part-time, whether legally or not. "Work"  
21 includes, without limitation, any such service performed by an employee, independent contractor,  
22 agent, partner, proprietor, manager, officer, director, apprentice, trainee, associate, servant,  
23 volunteer, and the like.

1 Section 3. Section 386.204, Florida Statutes, is amended to read:

2  
3 **386.204 Prohibition; exceptions.**--

4 (1) Tobacco smoking is prohibited ~~A person may not smoke in~~ in all enclosed indoor  
5 workplaces, government buildings, a public place common areas, public means of mass  
6 transportation and their associated terminals not subject to federal smoking regulation, and at a  
7 public meetings. Tobacco smoking is also prohibited on the premises of any place where smoking  
8 is prohibited, within 10 feet outside each entryway that is typically used by the public, including  
9 the primary front entrance and secondary entrances; and within 10 feet outside each other opening  
10 into such place, including, without limitation, doors; windows; air intake vents; and heating,  
11 ventilation, and air conditioning mechanisms serving such place. These prohibitions apply to all  
12 enclosed indoor workplaces, government buildings, common areas, and all enclosed parts thereof,  
13 without regard to whether work is occurring there at any given time. Any individual violating this  
14 section must stop smoking immediately upon the request of any citizen, any state agency employee  
15 or member of a law enforcement agency, or any person having management or supervisory  
16 authority or control over the premises on which the smoking is occurring. ~~except in designated~~  
17 smoking areas. These prohibitions do not apply in cases in which an entire room or hall is used for  
18 a private function and seating arrangements are under the control of the sponsor of the function  
19 and not of the proprietor or person in charge of the room or hall

20 (2) Notwithstanding anything in this part to the contrary, tobacco smoking may be  
21 permitted, but is not required to be permitted, in the following places if authorized by the owner,  
22 lessee, or other such person or persons having management or supervisory authority over the  
23 place:



1           (a) private residences when not being used for the commercial purposes specified in  
2           s. 386.203(1), Florida Statutes;

3           (b) designated smoking guest rooms at public lodging establishments as specified in  
4           s. 386.203(4), Florida Statutes;

5           (c) retail tobacco shops as specified in s. 386.203(11), Florida Statutes; and

6           (d) stand-alone bars as specified in s. 386.203(14), Florida Statutes.

7           (3)    The presence of a babysitter, nanny, maid, repair person, decorator, or the like to  
8           perform work in a private residence does not constitute a commercial use that would cause the  
9           private residence to become an enclosed indoor workplace, unless the work being performed is  
10           child care, adult care, or health care, or any combination thereof, and the owner, lessee, or other  
11           person occupying or controlling the use of the private residence is receiving or expecting to  
12           receive compensation therefor.

13  
14           Section 4.    Section 386.205, Florida Statutes (Designation of smoking areas), is  
15           repealed.

16  
17           Section 5.    Section 386.206, Florida Statutes, is amended to read:

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19           **386.206 Posting of signs.—**

20           The owner, lessee, or other such person or persons having management or supervisory  
21           authority over a place where smoking is prohibited~~or person in charge of a public place~~ shall  
22           conspicuously post, or cause to be posted, in a location that is clearly visible to the public at or  
23           near each entrance customarily used by the public, a sign stating that smoking is prohibited in such  
24           ~~place or public place. in any area designated as a smoking area signs stating that smoking is~~

1 ~~permitted in such area.~~ In addition, the owner, lessee, or other such person or persons having  
2 management or supervisory authority over any area where smoking may be permitted shall  
3 conspicuously post, or cause to be posted, in a location that is clearly visible to the public at or  
4 near each entrance to the smoking area that is customarily used by the public, a sign stating that  
5 smoking is permitted in that area only. ~~Each sign posted pursuant to this section shall have letters~~  
6 of reasonable size that can be read easily. The color, design, and precise place of posting of such  
7 signs shall be left to the discretion of the ~~person in charge of the premises~~ owner, lessee, or other  
8 such person or persons having management or supervisory authority over the area, but shall be no  
9 smaller than 8.5 inches by 11 inches. In the case of a private residence that is used for a  
10 commercial purpose as defined herein, the owner, lessee, or other person controlling the use of the  
11 residence shall post the sign required by this section at the entrance principally used by those  
12 entering or leaving the residence for such commercial purpose. Any such sign posted at a private  
13 residence shall comply with the requirements of this section and shall state the hours during which  
14 the private residence is used for the commercial purpose. ~~In order to increase public awareness, the~~  
15 ~~person in charge of a public place may, at his or her discretion, also post "NO SMOKING~~  
16 ~~EXCEPT IN DESIGNATED AREAS" signs as appropriate.~~

17 Section 6. Section 386.207, Florida Statutes, is amended to read as follows:

18  
19 **Section 386.207 Administration; enforcement; civil penalties; exemptions.--**

20  
21 (1) The department or the division shall enforce this part as to places within that  
22 department or division's regulatory jurisdiction as provided by general law, and shall, ss. 386.205  
23 and 386.206 and to implement such enforcement shall adopt, within 90 days after the effective  
24 date of this act, in consultation with the State Fire Marshal, adopt rules to implement this part,

1 rules specifying procedures to be followed by enforcement personnel in investigating complaints  
2 and notifying alleged violators, ~~rules defining types of cases for which exemptions may be granted,~~  
3 and rules specifying procedures by which ~~appeals may be taken by aggrieved parties~~ a private  
4 citizen reporting a violation of this part may seek administrative review of agency action, and the  
5 failure of an agency to act, on the violation reported by that citizen.

6 (2)(a) Any state agency responsible for any licensure or inspection of facilities where  
7 smoking is prohibited shall enforce this part by requiring its employees to inspect for any  
8 violations of this part in the course of conducting that agency's official agency business, and  
9 promptly to report any observed violations of this part to the department or the division. Public  
10 agencies responsible for the management ~~or~~ and maintenance of government buildings shall report  
11 ~~observed violations promptly to the department or division~~ any violations and evidence of  
12 violations observed at such government buildings. In addition, the State Fire Marshal shall report  
13 promptly to the department or division observed violations and evidence of violations of this part  
14 ~~ss. 386.205 and 386.206~~ found during its periodic inspections conducted pursuant to its regulatory  
15 authority. Further, any law enforcement officer certified under s. 943.10(1), (6), or (8) shall  
16 enforce the provisions of this part and shall issue a citation for observed violations thereof, such  
17 citation to include, without limitation, the information required by s. 386.207(2)(b). Such law  
18 enforcement personnel must also promptly provide copies of such citations to the department or  
19 division. In addition to any other reports required by this section, any such state agency employee  
20 or law enforcement personnel observing a violation of this part shall, at the time of observing the  
21 violation or promptly thereafter, give detailed notice of the observed violation to the person or  
22 persons having management or supervisory authority over the premises where the violation was  
23 observed.

1       ~~The department or the division, upon notification of observed violations of ss. 386.205 and~~  
2 ~~386.206, shall issue to the proprietor or other person in charge of such public place a notice to~~  
3 ~~comply with ss. 386.205 and 386.206. If such person fails to comply within 30 days after receipt of~~  
4 ~~such notice, the department or the division shall assess a civil penalty against him or her not to~~  
5 ~~exceed \$100 for the first violation and not to exceed \$500 for each subsequent violation. The~~  
6 ~~imposition of such fine shall be in accordance with the provisions of chapter 120. If a person~~  
7 ~~refuses to comply with ss. 386.205 and 386.206(b) , after having been assessed such penalty, the~~  
8 ~~department or the division may file a complaint in the circuit court of the county in which such~~  
9 ~~public place is located to require compliance.~~

10       (b) Upon receiving any report of any violation of this part as to which law enforcement has  
11 not previously issued a citation, the department or the division shall issue to the entity or  
12 individual charged with such violation a notice complying with the provisions of this part and the  
13 rules promulgated hereunder. At a minimum, each notice shall include the name, company name  
14 (if any), address, phone number, and other pertinent contact information of the violating entity,  
15 individual, or individuals; the date, place, approximate time of violation, and facts giving rise to  
16 the notice; and the law violated; and shall identify the person or persons who observed or reported  
17 the violation and, in the case of citations issued by law enforcement officers, the name of the  
18 issuing officer. Each notice shall state that such entity or individual may pay a specified fine to the  
19 department or division, or, notwithstanding the provisions of Chapter 120, may contest the charge  
20 solely by appearing in the county court of the county in which the violation occurred at a date and  
21 time to be specified in the notice, but not less than 30 days after the date of issuance of the notice.  
22 Each notice shall advise the alleged violator(s) that unsuccessfully contesting the notice in county  
23 court may subject the alleged violator(s) to liability for court costs in addition to any fine imposed  
24 hereunder.

1       (c) The Department of Health shall maintain a centralized database including, without  
2 limitation, all violations reported under this part, all alleged violators named in such reports, all  
3 citations issued and other official action taken as a result of reported violations, and the disposition  
4 of all citations issued pursuant to this part. If the department or the division receives a report of a  
5 violation of this part as to a place that is not within that department's or division's regulatory  
6 jurisdiction, the department or division shall forward the report to the Department of Health, which  
7 shall include the report in the centralized database and delegate it to the appropriate agency for  
8 investigation and enforcement.

9       (d) Any private citizen may report observed violations of this part to the department or  
10 division, to any law enforcement officer, or to any owner, lessee, or other such person or persons  
11 having management or supervisory authority over the place where smoking is prohibited. Any law  
12 enforcement officer or owner, lessee, or other person having management or supervisory authority  
13 over a place where smoking is prohibited who receives a citizen report of a violation of this part  
14 must report the violation to the department or division. The department and division are hereby  
15 authorized and required to adopt rules setting forth the format, content, and procedures for private  
16 citizens to use for making reports to accomplish the objectives of this part, but the failure of a  
17 private citizen to use an official form of report shall not preclude enforcement action based on the  
18 citizen's report if sufficient information is provided in the citizen's report enabling the person or  
19 entity receiving the report to take action thereon. The department or the division shall investigate  
20 all private citizen reports of a violation within 10 days after receipt of such report, and shall make  
21 available to the private citizen who made the report the results of its investigation and any further  
22 action it intends to take.

23       (3) Any manager or other person then in control of premises where smoking is  
24 prohibited who observes the occurrence on its premises of a violation of s. 386.204 shall promptly

1 direct the person violating this part to stop smoking or leave the premises. If such person refuses to  
2 stop smoking or to leave the premises, such manager or other person in control of the premises  
3 may call local law enforcement to enforce this part and assert a trespass charge against the  
4 noncomplying individual and may report the violation to the department or division. Any entity  
5 whose manager or other person in control of its premises attempts in good faith to ensure  
6 individuals' compliance with this part while on their premises shall not be liable for a violation of  
7 this subsection unless a violation of s. 386.204 is found to have occurred there three or more times  
8 within any six-month period and the manager or other person in control of its premises failed to  
9 make good faith attempts to ensure compliance. The manager or other person in control of  
10 premises is not required to call law enforcement or assert a trespass charge in order to establish  
11 good faith attempts to ensure compliance.

12 ~~—— (3) — A person may request an exemption from ss. 386.205 and 386.206 by applying to~~  
13 ~~the department or the division. The department or the division may grant exemptions on a case-by-~~  
14 ~~case basis where it determines that substantial good faith efforts have been made to comply or that~~  
15 ~~emergency or extraordinary circumstances exist.~~

16 ~~—— (4) All fine moneys collected pursuant to this section shall be used by the department for~~  
17 ~~children's medical services programs pursuant to the provisions of part I of chapter 391.~~

18  
19 Section 7. Section 386.208, Florida Statutes, is amended to read:

20  
21 **386.208. Penalties; jurisdiction; disposition of fines.--**

22 (1) Any person or entity violating who violates s. 386.204 or s. 386.206 commits a  
23 noncriminal violation as provided for in s. 775.08(3), punishable by a fine of not less than \$50 nor

1 more than \$150 ~~not more than \$100~~ for the first violation and ~~not more than \$500~~ not less than  
2 \$150 nor more than \$500 for each subsequent violation.

3 (2) Any owner, lessee, and other such person or persons having management or  
4 supervisory authority over a place where smoking is prohibited at the time of an individual's or  
5 individuals' violation of s. 386.204, when a violation has occurred at such workplace three or more  
6 times within any six-month period, shall be subject to a civil penalty of not less than \$150 nor  
7 more than \$500 for the first such six-month period, and not less than \$500 nor more than \$1000 for  
8 each subsequent six-month period in which three or more violations occur on the premises.

9 (3) The willful failure of any individual violating s. 386.204 to cease the behavior  
10 immediately upon request shall be cause for up to a 50% increase of the penalty to which the  
11 individual would otherwise be subject. In addition, repeated violations of s. 386.204 by the same  
12 individual shall be deemed willful and shall be cause for up to a 100% increase of the penalty to  
13 which the individual would otherwise be subject. If any entity or individual willfully violates s.  
14 386.204 or 386.206 more than two times within a twelve-month period, such repeat violations  
15 shall constitute good cause for the department or division to initiate proceedings pursuant to  
16 Chapter 120 to suspend or revoke any state-issued business or occupational license of such entity  
17 or individual, in addition to any other consequences imposed under this part.

18 (4) If an entity or individual that has been given notice of or a citation for a violation of s.  
19 386.206(1) fails to comply with s. 386.206(1) within 3 days after receipt of such notice or citation,  
20 the department or division shall assess against such entity or individual a civil penalty of not less  
21 than \$25 nor more than \$100 per day of noncompliance for the first violation, and not less than  
22 \$150 nor more than \$500 per day of noncompliance for each subsequent violation.

23 (5) Notwithstanding any provision of Chapter 120 to the contrary, any person or entity  
24 given notice by the department or the division, or cited, for committing a noncriminal violation

1 under s. 386.204 or s. 386.206 must comply with the requirement for paying the fine to the  
2 department or division, or appear before the county court. The fine must be paid within 30 days  
3 after the date of the notice or citation or, if a court appearance is held and the court determines that  
4 the noncriminal violation was committed, within 30 days after such determination by the court.

5 (6) Fines imposed hereunder and not contested may be paid directly to the department or  
6 division. If liability is contested, jurisdiction shall be with the appropriate county court, and all  
7 monetary penalties imposed by the court under this part shall be paid to the clerk of such county  
8 court for disposition as provided herein. Eighty percent of all penalty payments received by the  
9 department, the division, or a county court pursuant to this section shall be remitted to the  
10 Department of Revenue for transfer to the Department of Health to be used by that department for  
11 the Florida Biomedical research program pursuant to the provisions of Part I of chapter 391. The  
12 remaining 20 percent of penalty payments received by the department, the division, or a county  
13 court pursuant to this section shall be paid to or remain with the clerk of the county court for  
14 administrative costs of the court. If the court imposes court costs as an additional penalty as  
15 provided herein, 100 percent of such court costs shall remain with the clerk of the county court for  
16 administrative costs of the court.

17  
18 Section 8. Section 386.211, Florida Statutes, is amended to read:

19  
20 **386.211 Public announcements in mass transportation terminals.**--Announcements  
21 about the Florida Clean Indoor Air Act shall be made regularly over public address systems in  
22 terminals of public transportation carriers ~~located in metropolitan statistical areas with populations~~  
23 ~~over 230,000 according to the latest census.~~ These announcements shall be made at least every 30  
24 minutes and shall be made in appropriate languages. Each announcement shall include a statement



1 to the effect that Florida is a clean indoor air state and that smoking is prohibited in all enclosed  
2 indoor workplaces, government buildings, common areas, public means of mass transportation and  
3 their associated terminals, and at a public meetings. ~~allowed only in designated areas~~

4  
5 Section 9. Section 386.214 Florida Statutes, is created to read:

6  
7 **386.214 Discharge, discipline, discrimination, or retaliation against workers**  
8 **prohibited.--It is unlawful for any employer to discharge, discipline, discriminate against, or**  
9 **retaliate against in any way, any of its workers because that worker has requested or assisted in the**  
10 **enforcement of this part.**

11  
12 Section 10. This Act shall take effect July 1, 2003.

13  
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15  
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